

United States Senate

WASHINGTON, DC 20510

May 14, 2013

Honorable Frank Kendall
Under Secretary of Defense
Acquisition, Technology and Logistics
1400 Defense Pentagon
Washington, DC 20301-1400

Dear Secretary Kendall,

We write in regards to Section 811 of Public Law 111-84, *The National Defense Authorization Act for Fiscal Year 2010*. Section 811 requires justification and approval (J&A) of sole-source contracts awarded under the Small Business 8(a) program exceeding \$20 million. Enactment of this law covered procurements previously exempted from a J&A requirement by section 2304(f) (2) (D) (ii).

As you may know, Section 811 does not preclude, prevent or prohibit the award of a sole-source contract over \$20 million to a Tribal entity. However we are concerned government contracting officers may be inadvertently deterred from awarding any sole-source contracts to Tribal entities as a result of confusion over the provision. In fact, a recent Government Accountability Office report entitled, *Department of Defense's Implementation of Justifications for 8a (a) Sole-Source Contracts*, found that after enactment of the law 8(a) sole-source contract awards over \$20 million declined significantly. According to this same report, a memorandum from Army acquisition executives on Section 811 called for contracting officials to "limit the use of 8(a) sole-source contracts." The fact of the matter is the Department of Defense has long made beneficial use of 8(a) contracts because they can be put into place quickly and businesses in the program have demonstrated the qualifications, sophistication, and high performance.

We support Department of Defense efforts to achieve cost-savings and create efficiencies by instituting better business practices. However, work performed by Tribal corporations helps the Department meet its critical missions and we consistently receive positive feedback from government customers.

Limiting contracting opportunities for Tribal entities is also inconsistent with the United States' long-standing policy of self-determination and we would remind the Department

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contracts awarded under the 8(a) program generate revenues for Native shareholders so they are not reliant on other forms of assistance. Tribal entities' chief mission is providing benefits to the Native people they were created to serve. They work hard and contribute enormously for educational scholarships, cultural preservation, elder services, and community development.

We therefore respectfully request your assist in clarifying to contracting officials Section 811 is not intended to prevent the award of sole-source contracts over \$20 million to 8(a) entities. Additionally, we urge you to issue standard guidance contracting officers can reference when adhering to this law as to avoid confusion on its implementation.

We look forward to hearing from you on this issue and appreciate your attention to this matter.

Sincerely,



Mark Begich
United States Senator



James Inhofe
United States Senator